



**Commission for
Art Recovery**

affiliated with the
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and the World Jewish
Restitution Organization

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December 9, 2003

Mr. John Becker
Advisor for Property Restitution
Department of State
Bureau of European Affairs
Washington, DC 20520

Poland – Courbet

Dear John:

Martha Nierenberg, a U.S. citizen, owns a Courbet painting entitled, "Landscape Around Ornans" (copy attached). She inherited the painting from her mother, Elisabeth Herzog Weisz, the daughter of Baron Mór Herzog, founder of the largest collection of fine art in pre-World War II Hungary. The family was deprived of their art collection by the Nazis in 1944 when they fled for their lives to the West.

Ronald S. Lauder
Chairman

Charles A. Goldstein
Counsel

Apparently in 1946 the Allied Military Forces, by mistake, sent this painting to the National Museum in Warsaw together with other paintings that were being returned to Poland. Although the National Museum had never owned any Courbet painting and, therefore, was aware of the mistake, it added this picture to its inventory and made no attempt either to return it to the Allied Central Collecting Point in Munich or to find its true owner*. Even after the Government of Hungary and the Hungarian National Gallery published Sacco di Budapest in 1998, which stated not only that the painting was looted by Adolf Eichmann himself but that it was then located at the Polish National Museum, "a European public gallery (!)," the National Museum made no attempt to return the painting either to the Herzog heirs (who could easily have been located) or to Hungary. On August 29, 2001 the Commission for Art Recovery lodged a claim for the painting on behalf of Mrs. Nierenberg. The

* The ownership of the painting by the Herzog family appeared in publications as early as 1927 and was well known in the art world.

Museum finally admitted that it had acquired the painting by mistake and agreed to return it to its proper owner. The Museum then withdrew the painting from its collection and returned it to Mrs. Nierenberg in 2003 after being reimbursed for restoration costs that it had incurred earlier. We are prepared to provide complete documentation of all of the above.

Despite an understanding with high officials that Mrs. Nierenberg, a resident of New York, would be allowed to export the painting from Poland, the Ministry of Culture of Poland has now refused her application for a required export permit.

The result of this action by the Ministry of Culture has been not only to effectively deprive a Holocaust victim and U.S. citizen who has never resided in Poland of her right to possess or dispose of a painting whose taking by the Nazis constituted a crime against humanity but also to perpetuate and take advantage of the United States Government's mistake when it delivered the painting to Poland in 1946 in error. It is my understanding that all such returns were made on the condition that mistakes of this type would be corrected whenever discovered and that the Allies had stipulated that art which had been looted from victims of racial and religious persecution must be returned to the victims or their heirs.

The Commission, on behalf of Mrs. Nierenberg, formally requests that the Department of State intervene on her behalf and request the Polish Government to honor its obligations to both the U.S. Government and to her.

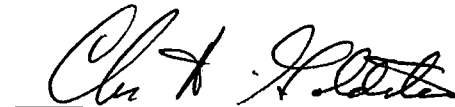
Enclosed is a copy of an application for reconsideration made to the Minister of Culture.

Thank you.

Very truly yours,

COMMISSION FOR ART RECOVERY

By:



Charles A. Goldstein
Counsel

Warsaw, 4 December 2003

The Minister of Culture

Attorney Tomasz Zasacki
from the Law Office of
Wardyński & Partners
Al. Ujazdowskie 10
00-478 Warsaw
representing Martha Nierenberg

MOTION

On the basis of art. 127 §3 and art. 129 §2 of the Administrative Procedure Code, I turn to you with a motion for renewed review of a case concerning the issue of a permit for permanent export of a painting by Gustave Courbet entitled "Landscape from the Area of Ornans." The Minister of Culture on 14 November 2003 issued a decision, OOZP/W/220/03, in this matter, which I received on 24 November 2003.

JUSTIFICATION

The Act on Protection of Monuments and Care for Historical Relics of 23 July 2003 took effect on 17 November (Journal of Laws, no. 162, pos. 1568) and the hitherto binding Act on the Protection of Cultural Assets of 15 February 1962 ceased to apply. In accordance with art. 139 of the Act on Protection of Monuments and Care for Historical Relics, the provisions of this law govern all related matters initiated and not concluded with a final decision. This means that the Minister of Culture, in again reviewing a case should actually start anew due to the change of law and ceased effect of the 1962 Act, which in a justification of new law submitted by the Chairman of the Council of Ministers to the Sejm Speaker, was described as follows: "*the current Act dated 15 February 1962 on the protection of cultural assets has been binding for the past 40 years in generally perceived to be anachronistic.*"¹

I underscore at the outset that the painting by Gustave Courbet entitled "Landscape from the Area of Ornans" was part of a collection in Budapest of Baron Mór Lipot Herzog, who was the grandfather of Martha Nierenberg. This collection was considered to be the finest private collection of art in Hungary. The painting "Landscape from the Area of Ornans" together with the entire collection was confiscated in 1943 as Jewish property on the basis of regulations governing the confiscation of any valuable assets held by Jews, and subsequently shipped from Hungary most likely at the order of Adolf Eichmann.

In 1945, this painting was found in Austria and secured on the territory of the Fischhorn castle in the vicinity of Zell am See, where it was accidentally included in artwork plundered from Poland. It was transferred in 1946 together with this artwork to the National Museum in Warsaw. Since 1946, this painting has been part of the inventory of the National Museum in Warsaw. It constitutes a part of Jewish property plundered during World War II and full ownership should be assumed by its rightful owner, Martha Nierenberg, who would thus recover lost family art. This case bears a vitally important aspect, which is historic justice

¹ Publication no. 624, Warsaw, 14 June 2002

toward persons and items surviving the Holocaust. I have no doubt that this aspect will be seriously considered during review of the case.

The fact that the painting is found on the territory of Poland is a historical coincidence. It is not a work by a Polish artist or any artist associated with Polish culture. Baron Herzog and his relatives being a family of Hungarian Jews had no ties to Poland and no one from this family ever resided in Poland. This painting does not depict the Polish countryside, but the vicinity of Ornans in France. The National Museum in Warsaw did not exhibit this work, which is currently found in storage. The painting is not present in the public consciousness as having any connection whatsoever with Poland. It can be stated that the painting by Gustave Courbet entitled "Landscape from the Area of Ornans" is in transit to its rightful owner, whereas Poland is merely a transit point in this journey.

Art. 51 of the Act on Protection of Monuments and Care for Historical Relics states that relics may be permanently exported abroad if their export does not harm the cultural heritage. In relation to the 1962 law, a significant change concerning the export of artwork abroad has taken place. Namely, a past exception is now a rule, whereby historical relics may be exported. A relevant administrative body, however, must analyze whether the export of a relic constitutes a loss to cultural heritage. The term "cultural heritage" has not been defined in the law and for this reason is subject to interpretation by the body reviewing a case. It should be understood that legislators have placed the burden upon the reviewing body to analyze the effects of artwork export on the cultural heritage. This means the Polish heritage since Polish authorities applying Polish law protect Polish heritage.

Stanisław Ossowski writes about cultural heritage in the following manner: "Generally, when referring to the cultural heritage of a social group, e.g. nation, not only the so-called personal culture of individuals is taken into account (...) but also, and perhaps above all, the group of works such as art, scientific works, technical achievements, settlements, institutions. Such subjects are transferred from generation to generation and, to a great extent, the culture of a social group ensures its continuity on their basis, in particular the culture of societies with a highly developed structure. (...) What does the transfer among generations of such subjects as tools and machines, buildings, sculpture, literary and scientific works, or laws rest upon? Certainly, not only on spatial operations. A copy of Beniowski is not tied to the Polish cultural heritage only because it is held within reach of persons from the Polish nation, just like the Wawel castle is not for this reason. It is tied because it is an object of specific experiences stemming from our complicated disposition, which we inherited from other members of our group that we will likely transmit together with or without other attributes to our successors."²

The inherited cultural connection of a society with a given item or work decides whether it is an element of cultural heritage. Ossowski further states, "cultural heritage that enables us to appropriately react to Pan Tadeusz is obviously very complex: it involves the ability to read and understand the Polish language, know certain historical facts and literary conventions as well as various emotional dispositions. In addition, a special complicated role is played by the attitude of Pan Tadeusz himself."³

² Stanisław Ossowski, Social Ties and Blood Heritage, Volume III, State Scientific Publishing House, Warsaw, 1966, pp. 64-69

³ Stanisław Ossowski, *Ibid.*

In continuing this thought, the author specifies this attitude as being the function composed of the conviction that *Pan Tadeusz* is a subject of great value having specific importance to the social group to which we belong, a book that should be read with the approach that is given to a national epic. Ossowski continues to add that the cultural heritage of a Polish intelligentsia member includes a specific posture of *Faust*, but that this differs from *Pan Tadeusz*. "these differences stem both from the content of *Faust* and *Pan Tadeusz* as well as from the fact that *Pan Tadeusz* is a work to which the Polish nation claims the right of "cultural ownership," whereas *Faust* is a foreign work."⁴ In the end, Ossowski states that "*Faust* is the "cultural property" of the German nation, just like *Pan Tadeusz* is the "cultural property" of the Polish nation." Ossowski similarly refers to the work of Mickiewicz and Copernicus by applying to them the meaning "These are 'our' artists" and differently evaluates Beethoven and Shakespeare.

In understanding cultural heritage in this manner, it is evident that the painting by Gustave Courbet entitled "Landscape from the Area of Ornans" cannot be treated as cultural heritage protected by the Act on Protection of Monuments and Care for Historical Relics. The above presented lack of any connection with Poland, both actual, material, emotional or symbolic, results in the inability of any Polish social tie to be historically transferred through this painting. The fact that the painting was never exhibited is important from this standpoint. It is not part of Polish achievements, never existed in social circulation and does not belong to any institution in Polish tradition or history. In the context of the Act's provisions, no claim of "loss" can be made since the permit sought by Martha Nierenberg does not concern cultural heritage protected by law.

The question should thus be posed how Polish authorities would assess the position of a third country, to which a painting by Józef Chełmoński or Jacek Malczewski plundered by Nazis from the National Museum in Warsaw was accidentally sent, if that country's authorities refused export on grounds of "loss to the cultural heritage."

In this context it should be noted that the decision of the Minister of Culture of 14 november 2003, no. OOZP/W/220/03, denying export of the painting contains no justification other than simple reference to the 1962 law. This is a violation of art. 107 §3 of the Administrative Procedure Code, which specifies the necessary elements that a proper justification should contain. It should also be noted that the justification of an administrative decision should be even more exhaustive if a matter rests on arbitrary resolution by an administrative body. Both art. 41 item 2 of the 1962 law as well as art. 51 item 1 of the currently binding law provide for an administrative body to decide first on loss to national culture followed by loss to cultural heritage. Such an evaluation should be free, but not arbitrary. The recipient of a decision has the right to know all elements leading to the issue of a specific resolution. The need to prepare a full and internally consistent justification particularly affects a decision with negative effect upon a party and based on administrative resolution. Otherwise, a party being merely informed that its arguments have not been recognized has no ability to polemicise with an administrative body if no justification exists. "Decisions left to administrative resolution require a rather broader justification than those undertaken under conditions of statutory constraint."⁵

⁴ Stanisław Ossowski, *Ibid.*

⁵ B. Adamiak and J. Borkowski, *Administrative Procedure Code*, Commentary, C.H. Beck, Warsaw, p. 479

VI
FOREIGN ART COLLECTION

VI. 107

Jean Désiré **Gustave Courbet**

Ornans 1819–1877 Latour de Peils
LANDSCAPE AROUND ORNANS

Oil on canvas, 78 x 126

Signed: G. Courbet

In the Museum since 1946

Inv. no. M.Ob.519



VI. 107. The painting depicts a landscape from somewhere around Ornans, Courbet's hometown in Franche-Comté, a popular theme in the artist's work. The same mountain scenery returns in Courbet's most famous works, such as *Burial at Ornans* and *Young Women from the Village*. The work dates probably from the 1860s, as indicated by the colour, brushwork and handling of "pure" landscape. Landscape played an important role in Courbet's evolution toward naturalism and a rejection of any kind of idealization in art. While he mastered the genre to perfection, his work paved the way for realistic landscape painting in France and Germany, and subsequently in all of Europe. /I.D./